

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No. 4:08-cv-2740
)	
KYLE C. KASTEN, individually and)	
d/b/a KJ & J TAX SERVICES)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the United States for its complaint against Kyle C. Kasten, individually and doing business as KJ & J Tax Services, alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a), 7407, and 7408 to enjoin defendant Kyle C. Kasten and anyone in active concert or participation with him, from:
 - a. Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself;
 - b. Understating customers' liabilities as subject to penalty under 26 U.S.C. § 6694;
 - c. Engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, or any other penalty provision of the Internal Revenue Code; and
 - d. Engaging in any conduct that interferes with the administration or enforcement of the internal revenue laws.

Jurisdiction and Venue

2. Pursuant to 26 U.S.C. §§ 7402, 7407, and 7408, this action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the actions giving rise to this suit took place in this district.

Defendant's Activities

5. Kasten is a commercial tax return preparer doing business under the name "KJ & J Tax Services." In 2007, Kasten prepared approximately 278 federal income tax returns for customers located in and in the vicinity of Harris County, Texas.

6. Kasten applied for and received an Electronic Filing Identification Number from the IRS in 2007 to electronically file income tax returns for others. Kasten also has a Preparer Tax Identification Number from the IRS.

7. Of the approximately 278 federal income tax returns that Kasten prepared and filed for customers in 2007, 99 percent of those returns sought a refund, an unusually high refund rate that is indicative of fraud.

Fuel Tax Credit Fraud

8. The IRS has identified at least 84 returns Kasten prepared in 2007 that claim a total of over \$700,000 in false fuel tax credits.

9. Kasten has prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms, Kasten misapplied 26 U.S.C. § 6421(a) ("Fuel Tax Credit"). The fuel tax credit is a credit available only to taxpayers who operate farm equipment or other off-highway business vehicles. The equipment or vehicles must not be registered for highway uses. Kasten improperly claims the credit for customers who do not meet these requirements

Overview of 26 U.S.C. § 6421(a): Credit for Fuel Tax Paid on Fuels

10. Fraudulently claiming entitlement to the fuel tax credit is a widespread tax scam that presents a serious enforcement problem for the IRS and is included among the IRS's "2008 'Dirty Dozen' Tax Scams." As part of this scheme, individuals improperly claim the Fuel Tax Credit for their personal or business gasoline or other motor fuel purchases. Indeed, many taxpayers, including Kasten's customers, claim the credit in amounts exceeding their actual personal or business fuel purchases.

11. 26 U.S.C. § 6421(a) provides a credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines, such as generators, compressors, power saws, and similar equipment; (2) for cleaning purposes; and (3) forklifts trucks, bulldozers, and earthmovers.

12. IRS Publication 510 defines a highway vehicle as any "self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other

functions.” A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the fuel tax credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the fuel tax credit: passenger automobiles, buses, motorcycles, and highway-type trucks and truck tractors. *See* IRS Publication 510 (2007), Excise Taxes for 2007, Chapter 2 (2007).

13. In addition, IRS Publication 510 provides the following example of an appropriate application of the fuel tax credit:

Caroline owns a landscaping business. She uses power lawn mowers and chainsaws in her business. The gasoline used in the power lawn mowers and chainsaws qualifies as fuel used in an off-highway business use. The gasoline used in personal lawn mower at home does not qualify.

14. The fuel tax credit does not apply to passenger cars or to trucks or other vehicles that are not registered or required to be registered to drive on public highways.

Kasten’s Fraudulent Claims of the Fuel Tax Credit

15. Kasten claimed bogus fuel tax credits on 59 percent of the federal income tax returns that he prepared for customers in 2007. Kasten claimed absurdly large credits by falsely reporting purchases of large quantities of gasoline.

16. To claim the credits, Kasten prepares IRS Forms 4136 for his customers’ returns, falsely stating that the customer has used gasoline for off-highway business purposes. Kasten claimed the fuel tax credit for, among others, customers claiming to be a technician, customer service, or truck drivers who would operate highway vehicles not eligible for the fuel tax credit.

17. Furthermore, in an attempt to justify the credits claimed, Kasten prepares fraudulent Schedules C for his customers' returns that, even if otherwise accurate, do not correlate to the large amounts of fuel tax credits claimed.

18. For example, Kasten fraudulently prepared a federal income tax return in 2007 for a customer, Deontray Smith, purporting to be a scenic driver, with claimed fuel tax credits of 44,005 gallons of gasoline for off-highway business use. Assuming that the vehicle used only traveled 20 miles per gallon, Smith would have to have driven over 2,400 miles every day of the year to use that much gasoline. Also, Smith, whose reported gross income was \$802, would have to have spent \$88,010 to purchase that amount of gasoline at \$2 per gallon.

19. Similarly, Kasten prepared a return in 2007 for Kathleen Washington falsely claiming that Washington bought 55,083 gallons of gasoline for off-highway business use. To use that much gasoline, again assuming that the vehicle only traveled 20 miles per gallon, Washington would have to have driven over 3,000 miles every day of the year. Also, at \$2 per gallon, Washington would have to have spent \$110,166 for that amount of fuel. Washington's return shows a gross income of only \$21,809.

20. Kasten also prepared a return in 2007 for another customer, Kim Creque, who reported working in customer service, falsely claiming that Creque bought 61,740 gallons of gasoline for off-highway business use. To use that much fuel, assuming the vehicle only traveled 20 miles per gallon, Creque would have to had to drive over 3,380 miles every day of the year. Also, Creque would have had to spend \$123,480 for that fuel at \$2 per gallon. Creque's income tax return though shows a gross income of \$47,027. Other returns that Kasten prepared contain similar, blatantly fraudulent claims of the fuel tax credit.

Kasten's Fraudulent Claims of Wages and Withholding and Other Fraudulent Schemes

21. The IRS has identified at least 38 federal income tax returns prepared by Kasten that contained false wage and withholding information and include false Forms W-2. The returns reported wages and withholdings that have not been reported to the IRS by the purported third-party payors.

22. For example, Kasten prepared a return for Tony Myles in 2007 who reported wages of \$19,736 and federal withholding of \$4,874. IRS records show that Myles's only income was \$5,064 in pension and annuity income from Social Security. The third-party payor that supposedly paid these wages and withholding did not report that Myles earned any wages or that the payor withheld any taxes.

23. Similarly, Kasten prepared a return in 2007 for another customer, Raymond Strahan that reported \$19,538 in wages and federal withholding of \$4,847. IRS records show, however, that Strahan received only \$345 in income from a different employer than that claimed on his return.

24. Kasten's fraudulent federal tax return preparation is not limited to preparing returns with improper fuel tax credits, fraudulent schedules and inflated wages and withholding. Kasten also prepared returns with false claims for the earned income tax credit, dependent exemptions, and other fraudulent expenses and deductions in 2007.

Failure to Comply with IRS Request for Information under 26 U.S.C. § 6107(b)

25. Additionally, Kasten failed to provide the IRS with copies of returns or claims or a list of all returns and claims, that Kasten prepared in 2007, as the IRS requested on October 17, 2007 and November 15, 2007 under 26 U.S.C. § 6107(b).

Harm to the Public Caused by Kasten

26. As part of his fraudulent schemes, Kasten directed the IRS to pay the requested refunds on the false and fraudulent income tax returns he prepared into bank accounts that he owned. All told, Kasten sought to have over \$820,000 in fraudulent refunds transferred into accounts that he controlled.

27. Kasten's customers have been harmed because they paid Kasten fees to prepare tax returns that substantially understate their correct tax liabilities. Many customers now face large income tax deficiencies and may be liable for sizeable penalties and interest.

28. Kasten's conduct harms the United States because his customers are under-reporting and under-paying their correct tax liabilities. The IRS has identified 84 fraudulent federal income tax returns that Kasten prepared in 2007 that claim over \$700,000 in fraudulent fuel tax credits alone.

29. In addition to the direct harm caused by preparing tax returns that understate customers' tax liabilities, Kasten's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

30. Kasten further harms the United States because the IRS must devote its limited resources to identifying Kasten's customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties assessed.

Count I: Injunction under 26 U.S.C. § 7407

31. The United States incorporates by reference the allegations contained in paragraphs 1 through 30.

32. 26 U.S.C. § 7407 authorizes a district court to enjoin a tax preparer from:

- a. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695;
- b. Misrepresenting his eligibility to practice before the IRS, or otherwise misrepresenting his experience or education as a tax return preparer;
- c. Guaranteeing the payment of any tax refund or the allowance of any tax credit; and
- d. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. If the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court further finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax preparer.

33. Kasten has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal income tax returns that understate his customers' liabilities based on unrealistic, frivolous, and reckless positions.

34. Kasten has engaged in conduct subject to penalty under 26 U.S.C. § 6695 by not complying with the IRS's request pursuant to 26 U.S.C. § 6107(b) that Kasten provide to the IRS a customer list or copies of all federal tax returns prepared by Kasten for 2007.

35. Kasten's continual and repeated violations of 26 U.S.C. §§ 6694 and 6695 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under 26 U.S.C. § 7407.

36. If he is not enjoined, Kasten is likely to continue to file false and fraudulent tax returns.

37. Kasten's continual and repeated conduct subject to an injunction under 26 U.S.C. §

7407, including his flagrant misuse of the fuel tax credit claims, his fraudulent inflation of his customers' wages and withholding, and other misapplications of deductions and credits demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Kasten's interference with the proper administration of the internal revenue laws. Thus, he should be permanently barred from acting as a return preparer.

Count II: Injunction under 26 U.S.C § 7408

38. The United States incorporates by reference the allegations in paragraphs 1 through 37.

39. 26 U.S.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either 26 U.S.C. § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

40. 26 U.S.C. § 6701(a) penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

41. Kasten prepares federal tax returns for customers that he knows will understate their correct tax liabilities. Kasten's conduct is thus subject to a penalty under 26 U.S.C. § 6701.

42. If the Court does not enjoin Kasten, he is likely to continue to engage in conduct subject to penalty under 26 U.S.C. § 6701. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

Count III: Injunction under IRC § 7402(a) Necessary to Enforce the Internal Revenue Laws

43. The United States hereby incorporates by reference the allegations in paragraphs 1 through 42.

44. 26 U.S.C. § 7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

45. Kasten, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

46. Unless enjoined, Kasten is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Kasten is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

47. The United States will suffer irreparable injury if Kasten is not enjoined, which outweighs the harm to Kasten of being barred from acting as a return preparer.

48. Enjoining Kasten is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop Kasten's illegal conduct and the harm it causes the United States.

49. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States of America prays for the following:

A. That the Court find that Kyle C. Kasten has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the

administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court, pursuant to 26 U.S.C § 7407, enter a permanent injunction prohibiting Kyle C. Kasten from acting as a federal tax return preparer;

C. That the Court find that Kyle C. Kasten has engaged in conduct subject to a penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;

D. That the Court find that Kyle C. Kasten has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Kyle C. Kasten, and all those in active concert or participation with him, from:

1. acting as a federal tax return preparer, or assisting in or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
2. understating customers' liabilities as subject to penalty under 26 U.S.C. § 6694;
3. engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, or any other penalty provision in Title 26 of the United States Code; and
4. engaging in conduct that interferes with the administration or enforcement of the internal revenue laws.

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Kyle C. Kasten to contact, within fifteen days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared federal tax returns or claims for a refund in 2007 to inform them of the permanent injunction entered against him;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Kyle C. Kasten to produce to counsel for the United States, within fifteen days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for a refund since January 1, 2007;

H. That the Court retain jurisdiction over Kyle C. Kasten and over this action to enforce any permanent injunction entered against him;

I. That the United States be entitled to conduct discovery to monitor Kyle C. Kasten's compliance with the terms of any permanent injunction entered against him; and

J. That the Court grant the United States such other and further relief, including costs, as is just and reasonable.

Dated: September 10, 2008

Respectfully submitted,

DONALD J. DeGABRIELLE, JR.
United States Attorney

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